

these cheques were honoured, were merely statements to back up and support the representation that the cheque in question would be honoured.

There can, in my opinion, be no room for any possible doubt or confusion about the matter. The complainant himself said that when he was referred to the two previous cheques and that they had been honoured he accepted the appellant's assurance that the cheque (i.e. the one in question) would be honoured. Furthermore, towards the end of the learned Magistrate's Grounds of Decision he says:—

"The appellant and the complainant knew that the transactions were cash transactions and there was a clear representation that the cheque would be met."

The appellant was in no way prejudiced and so far from the learned Magistrate being confused as alleged in the grounds for appeal, I think he showed a comprehensive grasp and appreciation of the position.

There is, in my view, no substance in the other grounds argued on the appeal.

In my judgment, therefore, this appeal must be dismissed and the conviction and sentence are affirmed.

Appeal dismissed.

RE HO KHIAN CHEONG DECD.

[O.C.J. (Ambrose J.) August 10, 1963]

[Singapore—Probate No. 1 of 1963]

Administration—Petition for letters of administration by widow—Caveat by stranger claiming to be lawful daughter and next-of-kin of deceased—Onus on caveator.

Chinese customary marriage—Ceremony appropriate for marrying principal wife confers status of secondary wife if principal wife is living in Singapore at time of ceremony.

A consensual marriage is sufficient to acquire the status of a secondary wife.

Where a Chinese, having a principal wife living in Singapore, goes through a ceremony of marriage with another woman, and such ceremony is appropriate for the purpose of marrying a principal wife according to Chinese custom, both justice and common sense require that the other woman be accorded the status of a secondary wife.

[Editorial Note: Attention is drawn to the restrictions imposed on polygamy by section 4 of the Women's Charter, 1961 (Singapore Ordinance No. 18 of 1961) which came into force on 15th September 1961.]

Case referred to:—

- (1) *Re Yeow Kian Kee, deceased; Er Gek Cheng v. Ho Ying Seng* [1949] M.L.J. 171.

PROBATE.

R. E. Redrup for the petitioner.

Frederick Wu for the caveator.

A **Ambrose J.:** On the 2nd January, 1963, Tay Wang Tee, filed a petition for letters of administration of the estate of Ho Khian Cheong, deceased, claiming to be his lawful widow. Subsequently, Maureen Angela Boudville, filed a caveat claiming to be one of the lawful daughters and next-of-kin of the deceased. As a result, the hearing of the petition was adjourned for certain issues to be decided by the court.

The issues were:

- B (1) Was the caveator's mother, Quek Boo Lat, married to the deceased in accordance with Chinese custom?
C (2) Was the caveator the legitimate child of the deceased by Quek Boo Lat?

The facts were these. Quek Boo Lat and the deceased went through a ceremony of marriage in Singapore in 1940. That ceremony was appropriate for the purpose of marrying a principal wife according to Chinese custom. At the time of the ceremony the deceased had a principal wife in Singapore, namely, Tay Wang Tee, the present petitioner. Quek Boo Lat did not know then that the deceased had a principal wife; and she thought that the ceremony made her the principal wife of the deceased. The deceased and Quek Boo Lat lived and cohabited at 17 Teng Tong Road, Singapore, from 1940 till 1943 when the deceased deserted her. The caveator was born to them on the 13th September, 1941, about a year after their marriage. It was not until after she had been deserted that Quek Boo Lat discovered that the deceased had a principal wife.

It was contended by counsel for the petitioner that the onus was on the caveator to establish that the marriage of Quek Boo Lat and the deceased was valid according to Chinese custom. Counsel conceded that there was a custom amongst many Chinese domiciled in the former Straits Settlements to take more than one principal wife subject to the proviso that they must not be taken in the same place: see *Braddell's Laws of the Straits Settlements*. Vol. I, page 85. It was submitted that in the absence of expert evidence that Chinese custom would permit a Chinese to take two principal wives in the same place the Court could not come to such a conclusion; and that, therefore, the caveator had failed to prove that the marriage of Quek Boo Lat and the deceased was valid according to Chinese custom.

I Counsel for the caveator contended that the caveator had merely to prove a consensual marriage. He relied on *In the Estate of Yeow Kian Kee, deceased, Er Gek Cheng v. Ho Ying Seng*,⁽¹⁾ He referred to the following passages in the judgment of Murray-Ansley C.J.:

"The legal requirements for marriage with a *t'sai* (principal wife) or a *t'sip* (secondary wife) are, I think, the same. This means that the law of this Colony (Singapore) merely requires a consensual marriage i.e. an agreement to form a relationship that comes within the English definition of marriage. It is no longer any part of that conception that such a relationship must be life-long. It merely means one of indefinite duration

"With these simple legal requirements the difficulties that have troubled the Courts have been merely questions of evidence. The burden of proof is upon whoever alleges the status of *t'sip* to have existed. What must be proved in order to discharge that burden? In most cases there is some sort of a ceremony, and there is recognition of the *t'sip* as a member of the husband's family. But this is evidentiary only. It is not essential to the acquisition of the status of *t'sip*. A formal contract in writing would be conclusive. If the parties were to live as such publicly so as to acquire the reputation of being man and *t'sip* that would also be evidence that the status had been acquired. On the other hand, I do not consider that mere cohabitation for a considerable period would by itself be sufficient evidence."

In my judgment I had to determine the issues not by Chinese custom exclusively but by the relevant portion of the law of Singapore applicable at the material time. That portion of the law of Singapore is a fusion of the principles and concepts of English law and Chinese custom. It did not matter in the least, therefore, that the caveator did not call an expert on Chinese custom to testify that Chinese custom would permit a Chinese to take two principal wives in the same place. In my opinion, as the deceased had a principal wife living in Singapore at the time he went through a ceremony of marriage with Quek Boo Lat, he could only take her as a secondary wife. Considering the fact that the deceased and Quek Boo Lat had agreed to become man and wife, it seemed unfair to me to relegate her to the position of a concubine merely because the position of principal wife which she intended to fill had been taken by someone else. Both justice and common sense required that she be accorded the status of a secondary wife. Such a conclusion seemed to me to be in accordance with the views expressed by Murray-Aynsley C.J. in the case cited by counsel for the caveator. There was a consensual marriage and there was a marriage ceremony. There was no recognition of Quek Boo Lat as a member of the husband's family, but that was not essential to the acquisition of the status of a secondary wife.

For the above reasons I decided that by her marriage to the deceased in 1940 Quek Boo Lat became his secondary wife, notwithstanding the fact that the ceremony they went through was appropriate for the purpose of marrying a principal wife; and that the caveator was the legitimate child of the deceased by Quek Boo Lat.

Order accordingly.

Solicitors:—Osborne-Jones & Redrup;
Donaldson & Burkinshaw.

THOMAS v. ATTORNEY-GENERAL

[A.C.J. (Ainley C.J.) July 29, 1961]

[Sarawak—Civil Appeal No. 12 of 1960]

Costs—Appeal—Advocate appearing in person in appeal against an order of costs made against him personally—Appeal successful—Taxed costs awarded—Bill of Costs taxed by Registrar—Certain items taxed-off in entirety—Appeal against order of taxing officer—Sarawak, North Borneo and Brunei High Court (Scale of Costs) Rules 1959, r.10(2).

Costs—Advocate conducting his own appeal—Basis on which costs to be permitted—Rule in Chorley's case.⁽¹⁾

There is no principle which ought to prevent a successful party who is an advocate and who does an advocate's work from being indemnified not merely for the time which he must necessarily spend as a witness in his own case but also for the pains, trouble and skill which he has to incur and to exercise in order to bring it to a successful conclusion.

Cases referred to:—

(1) *London Scottish Benefit Society v. Chorley, Crawford & Chester* (1884) 13 Q.B.D. 872; 53 L.J.Q.B. 551.

(2) *Read v. Gray* [1952] 1 All E.R. 241.

(3) *In re Wallis* (1890) 25 Q.B.D. 176.

(4) *Stone v. Lickorish* [1891] 2 Ch. 363.

(5) *Tolpuitt v. Mole* [1911] 1 K.B. 87; [1911] 1 K.B. 836, C.A.

COURT OF APPEAL RULING.

T. O. Thomas in person.

C. T. Tan (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Ainley C.J.: This is an appeal from an order of a taxing officer brought under Rule 10(2) of the Sarawak, North Borneo and Brunei High Court (Scale of Costs) Rules, 1959*.

The appellant is an advocate of this Court. He appeared as an advocate in the case of *Fu Tze Man v. Attorney-General of Sarawak*† before the High Court. An order of costs was made against him personally in that case, and from that order he appealed successfully to the Court of Appeal. Taxed costs of the appeal were awarded to the appellant. The appellant conducted his own case before the Court of Appeal, in which case he was of course the litigant, and in his bill of costs which was taxed by the Chief Registrar of this Court, he included a number of items which could have been included with propriety only upon the basis that he was acting for a client, that is to say for himself. For

* Rule 10(2) reads:

"Any person affected by any order of a taxing officer may appeal therefrom to a Judge in Chambers. Such appeal shall be by notice in writing to attend before the Judge without fresh summons within ten days after the decision complained of, or such further time as may be allowed by a Judge. An appeal from the decision of a taxing officer shall be no stay of proceedings unless so ordered by a Judge."

† Unreported.